(2003) 01 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 6069 of 2001

Panmeshwary Devi and Others APPELLANT

Vs

O.N.G.C. Ltd. and Others RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:
Hindu Succession Act, 1956 — Section 8

Citation : (2003) 2 GLR 1490

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : G.T. Dayani, for Petitioner Nos. 1 and 4, for the Appellant; Ajay R. Mehta, for the Respondent

Final Decision : Partly Allowed

Judgement

Jayant Patel, J.—Heard Mr. G.T. Dayani, learned Counsel for the petitioners and Mr. A. R. Mehta, learned Counsel for respondent Nos. 1, 2 and 3. Respondent Nos. 4 and 5 are served with the notice of rule. However, neither the respondents themselves, nor any advocate on their behalf has appeared when the matter is taken up for final hearing.

2. The present petition is preferred by the petitioners for challenging the order dated 9-7-2001 passed by the General Manager, O.N.G.C., Ahmedabad for disbursement of terminal benefits of the deceased, Dharampal Singh and by way of apportionment of 50% to the wife and the children and 25% to the father and 25% to the mother.

3. Mr. Dayani for the petitioners, at the outset, has submitted that though initially the challenge in the petition was against the disbursement of 25% amount to the mother also, however, the petitioners have no objection if 25% share of terminal benefits is paid to the mother of the deceased employee and he submitted that now the petitioners are challenging the apportionment of 25% to the father only.

4. In view of the above statement made by Mr. Dayani, the only question required to be considered is whether the father of the deceased employee would be entitled to any share of the terminal benefits and if so, as to what extent.

5. There is no dispute on the point that the father was shown as the nominee in the service record of the deceased employee, Dharampal Singh. However, it is well settled that merely because nomination is made, the same does not confer any additional right to enjoy the property of the deceased, except that of collecting agent. The duty read with the nominee is to collect the fund and to distribute amongst genuinely legally entitled heirs of the deceased. Therefore, merely because the father is shown as nominee would not give any additional right to him to have the share in the terminal benefit of the deceased employee, who was his son.

6. In my view, in the matter of considering the share of payment of compensation under Motor Vehicles Act, the Division Bench has considered the question regarding the right of the father to have the share of compensation in the case of Indiraben and Others Vs. Narayanbhai Jugabhai Rabari and Others, . At Para 10 of the said judgment, the Division Bench has observed as under :

"10. Under the Hindu Succession Act, the only heirs to a Hindu deceased dying intestate are mother and sons and daughters of the deceased. These are Class I heirs. All of them take simultaneous and equal share under Sections 8 and 10 read with Class I of the Schedule. The father is not one of these heirs. Therefore, the appellant Nos. 1 to 5 and 7 each would be entitled to 1/6th share. Therefore, appellant No. 7 would be entitled to 1/6th share and appellant No. 6 would not be entitled to any share."

7. Section 8 of Hindu Succession Act, which is relevant for the purpose of this petition reads as under :

"Section 8. General rules of succession in the case of males :- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-

(a) firstly upon the heirs, being the relatives specified in Class I of the Schedule;

(b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

(c) thirdly, if there is no heir of any of the two Classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

In view of the aforesaid provisions of Section 8, the property of male Hindu dying intestate shall devolve firstly upon the heirs being relatives satisfied in Class I of the Schedule. Clause (b) of Section 8 provides that if there is no heirs of Class I, then only property shall devolve upon the relatives specified in Class II. Therefore, when relatives specified in Class I are available, relatives specified in

Class II will not be entitled to any share in the property of the male Hindu dying intestate. The name of the father is mentioned in Class II category and in Class I category only the mother is included. In view of the aforesaid legal position, it is apparent that the father of the deceased employee would not be entitled to any share in the terminal benefits so long as the relatives specified in Class I are available. It has not come on record that there was any "Will" of the deceased employee, and, therefore, the property of the terminal benefit of the deceased is to be treated as "intestate", and therefore, the father of the deceased would not be entitled to any share. So far as the mother is concerned, as recorded, the petitioners themselves have accepted the share to the extent of 25% in comparison to other four legal heirs, who are petitioners herein, of the deceased namely; widow and three minor sons of the deceased, and therefore, the share allotted to mother to the extent of 25% is not required to be disturbed, because the petitioners have fairly conceded for the same.

8. In view of the aforesaid discussion, the order dated 9-7-2001 passed by General Manager of O.N.G.C., copy whereof is produced at Annexure "E", deserves to be quashed so far as allotting the share to the father to the extent of 25% is concerned. The rest of the order or to be more specific, the share of 25% already allotted to the mother is not being disturbed. Normally, the said share of 25% of the father, which is not to be paid to the father is to be distributed equally amongst the other legal heirs, who are petitioners and the mother, but it has been submitted by Mr. Dayani, appearing for the petitioners that even if the equal share of 100% amount is considered and the proportionate 1/5th share of the mother is considered, then also the amount is more by about Rs. 8,000/- to which the petitioners are not desirous to claim. Therefore, it is held that the mother of the deceased employee shall get 25% of Rs. 1,73,340/-, whereas 75% of the amount shall go to all the petitioners herein and since the petitioner Nos. 2, 3 and 4 are minor, the amount shall be paid to petitioner No. 1 as guardian of petitioner Nos. 2, 3 and 4. The respondent Nos. 1, 2 and 3 shall pass consequential order and shall disburse the amount as directed within a period of three months from the date of receipt of the order of this Court.

9. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs.